REMARKS

To further prosecution of the present application, Applicant has amended herein Claims 2, 14, 17, 20, 26-27, 29, 37-38, 42, 44, and 49, and has cancelled herein Claims 3-4, 15, 18, 21, 30-32, 46, and 50-51. In addition, Applicants have added herein new Claims 65-78. The claim amendments and new Claims do not add subject matter to the present application and have antecedent basis. Applicant respectfully requests reconsideration.

Claims 2, 10-11, 14, 17, 20, 26-27, 29, 37-38, 40-41, 42-44, 49, and 65-78 are currently pending in the present application with Claims 2, 14, 29, 42, 49, 72, 73, and 78 in independent form.

Rejection of Claim 50 Pursuant 35 U.S.C. § 101

Claim 50 has been rejected pursuant 35 U.S.C. § 101 because the claim invention directed to an insurance policy is non-statutory subject matter, and not included in the patentable subject matter identified in this statute. Applicant has cancelled herein Claim 50, and requests withdrawal of the rejection.

Rejection of Claims 2-5, 10-11, 13-15, 17-18, 20-21, 26-27, 29-32, 37-38, 40-44, 46, 48-55, 60-61 and 63-65 Pursuant 35 U.S.C. § 103(a)

Claims 2-5, 10-11, 13-15, 17-18, 20-21, 26-27, 29-32, 37-38, 40-44, 46, 48-55, 60-61 and 63-65 have been rejected pursuant 35 U.S.C. § 103(a) as being unpatentable over U.S. 5,845,256 issued to Pescitelli ("Pescitelli") in view of U.S. 6,584,446 issued to Buchanan ("Buchanan"). Applicant respectfully traverses the claim rejections for the reasons given below.

The Examiner has rejected the Claims as being unpatentable over Pescitelli in view of Buchanan because Pescitelli substantially teaches the method claimed in the above-noted, with the exception Pescitelli does not teach "the insurance policy creates an obligation of an insurer to pay the benefit amount upon the one person assuming the first physical condition: (i) at a time the another person assumes the first physical condition,

or (ii) after the another person assumes the first physical condition and within the benefit qualification time frame," as recited in the independent claims.

The Examiner indicates that Buchanan provides evidence that this feature is well known in the art; therefore, at the time of the invention, it would have been obvious to one having ordinary skill in the art to have modified the method of Pescitelli with the feature Buchanan discloses. Applicant respectfully disagrees for the reasons given below.

Buchanan discloses a system for underwriting a combined joint life and long term care insurance policy that is responsive to long term care demands and life expectancies of insureds. The disclosed insurance product would provide for dual long term care requirements with joint life benefits paid upon the death of the survivor or the second of two insureds. Buchanan essentially discloses a joint and last survivor life insurance policy with the added features of specified long term care benefits. (col. 1, lines 46-56). In other words, Buchanan discloses a combination policy that includes a portion that pays the long term care claims of two insureds while the insureds are alive, and a portion that pays a death benefit upon death of the survivor of the two insureds.

Buchanan mentions there are many different types of insurance policies including a "joint life, last to die" policy, also known as "joint and last survivor" policy, that pays a death benefit upon the second death of two insureds, usually a husband and wife. Such a "joint life, last to die" policy only pays the death benefit when both insureds have died and upon death of the second or surviving insured. Buchanan teaches combining this type of policy with long term care benefits that are based upon the long term health care expectations and life expectancies of the insured parties. (col. 1, lines 57-61).

The method of the Buchanan invention is used to form the basis for calculating the expected value of the long term care claims of either insured and the "last to die" death benefit of the surviving insured of an insurance policy for two insureds, including specific limits on total benefits. (col. 3, lines 17-22). A portion of the policy provides for long term care claim payments that are paid to either insured at any time or are paid to both insureds at the same time. (col. 3, lines 31-35). Another portion of the policy provides for the "last to die" benefit that is paid upon the death of the second of two insureds to die. The amount of the death benefit that would be paid is dependent upon

that amount that has not already been paid to insureds for prior long term care claims. It is possible that upon the death of the second to die, no death claim will be paid because all benefits under the policy had been previously paid through the long term care portion. (col. 3, lines 38-44). Thus, under the Buchanan policy it is possible that the "last to die" benefit could range from 100% to 0% of the initial benefit because of prior long term benefit payments. (col. lines 44-47).

Independent Claim 2 has been amended herein and is directed to a method for providing a simultaneous or coincident multiple death insurance policy for one person and another person. The method comprises, in part, identifying the persons as insured parties under the simultaneous or coincident multiple death insurance policy; the policy being a stand-alone policy independent in effect from other insurance policies providing benefits for either or both persons. The method further comprises entering information related to a death benefit amount into the data processing apparatus and determining a death benefit amount based upon a probability of the simultaneous or coincident death of the persons, and a probability of the coincident death of one person and permanent incapacity of the another person within a benefit qualification time frame. The death having a fixed value and being determined independent of other risk exposures of either or both persons and independent of one or more other insurance benefits either or both persons are eligible for.

The method of Claim 2 also includes generating the insurance policy using the data processing apparatus from the information relating to the eligible persons, the death benefit amount, the at least one beneficiary, and the benefit qualification time frame. The insurance policy creates an obligation of an insurer to pay the death benefit amount upon the confirmation of at least one of: (i) the occurrence of simultaneous or coincident death of the persons at substantially the same time or within the benefit qualification time frame, and (ii) the occurrence of death of one of the persons and the permanent incapacity of another of the persons within the benefit qualification time frame. The payment of the benefit amount is independent of one or more other benefit payments either or both persons are eligible for.

Applicant respectfully submits the cited combination of prior art patents does not teach or suggest the method recited in Claim 2. More particularly, the combination of

prior art does not teach or suggest at least a *simultaneous or coincident multiple death insurance policy as a stand-alone policy independent in effect from other insurance benefits either or both persons are eligible for.* Rather, the cited combination of prior art, and specifically Buchanan, disclose a combination policy that effectively serves to provide two different types of insurance coverage and pays two different types of benefits, including payments of long term care claims (which are presumably continuous payments made to the insureds as needed) and a death benefit claim upon the death of the second to die of the two insureds. The death benefit is not independent of the long term care benefits, but is affected by the payment of the long term care benefits during the life of the insureds.

In addition, the method of Claim 2 provides an insurance policy that pays only a death benefit that is different from the dual coverage the Buchanan policy provides for long-term care <u>and</u> a death benefit.

In contrast to the method of Claim 2, the Buchanan method forms the basis for rate structuring of a policy that is dependent not only on a death benefit for death of the two insureds, but also on the expected value of long term care benefits and the life expectancies of the insureds. Unlike the death benefit provided under the method of Claim 2, the death benefit of a Buchanan policy, as mentioned, is affected by the long term care benefits paid under the policy and is therefore not *independent in effect from other insurance benefits either or both persons are eligible for.*

Thus, in contrast to Claim 2, the method of Buchanan discloses a method of calculating a policy that is different from the method of Claim 2 for providing a simultaneous or coincident multiple death policy at least with respect to the limitation directed to *identifying the persons as insured parties under the simultaneous or coincident multiple death insurance policy, the insurance policy being a stand-alone policy independent in effect from other insurance benefits either or both persons are eligible for.* In addition, the methods are different with respect to the limitation directed to *generating the insurance policy . . . the insurance policy creating an obligation of an insurer to pay the death benefit amount . . .* (and) *payment of the death benefit amount being independent of one or more other benefit payments either or both persons are eligible for.*

The method of Buchanan also does not include the limitation directed to *entering information related to a death benefit amount into the data processing apparatus and determining a death benefit amount . . .* (where) *the benefit amount has a fixed value* and is *based on a probability of the simultaneous or coincident death of the persons, and a probability of death of one person and permanent incapacity of the another person within a benefit qualification time frame, . . . and being determined independent of other risk exposures of either or both persons and independent of one or more other insurance benefits either or both persons are eligible for.* Rather than providing a death benefit of a fixed value, the Buchanan method provides a policy with a death benefit amount that can vary and that depends on the prior long term care claims paid to one or both insureds under the policy. The death benefit therefore can range in value from 100% to 0% of the initial benefit because of prior long term care benefit payments and is not of *fixed value* as is the death benefit of Claim 2.

In addition, the death benefit of the Buchanan policy is not independent of other risk exposures or other insurance benefits the insureds are eligible for, such as the expected long term care payments. Rather, the method of Buchanan provides a policy that is based upon calculating the expected value of long term care demands which are risk exposures that the method of Claim 2 does not consider nor incorporate in determining a death benefit amount and which are insurance benefits from which the death benefit of Claim 2 is independent of.

Thus, the method of Buchanan does not include the limitation of Claim 2 directed to *determining a death benefit amount based upon a probability of the simultaneous or coincident death of the persons, and a probability of the coincident death of one person and permanent incapacity of the another person within a benefit qualification time frame, the death benefit amount . . . being determined independent of other risk exposures of either or both persons and independent of one or more other insurance benefits either or both persons are eligible for.*

Further, neither Pescitelli or Buchanan alone or in the suggested combination teach or suggest *generating the insurance policy . . . the insurance policy creating an obligation of an insurer to pay the death benefit amount upon the confirmation of at least one of: (i) the occurrence of simultaneous or coincident death of the persons at*

substantially the same time or within the benefit qualification time frame, and (ii) the occurrence of death of one of the persons and the permanent incapacity of another of the persons within the benefit qualification time frame. In particular, the method of Buchanan does not provide a policy for payment of a death benefit upon death of two persons at substantially the same time or within the benefit qualification time frame. "Joint life, last to die" or "last survivor" policies pay a death benefit upon the death of the second of two insureds to die. In contrast, the method of Claim 2 provides a policy that will pay upon death of the second of two insureds to die if such death of the second insured occurs within the benefit qualification time frame identified in the policy. Therefore, a policy produced in accordance with the method of Claim 2 would not pay a death benefit if the death of the second of the insureds to die occurred outside of the benefit qualification time frame, as would the policy produced in accordance with the method of Buchanan.

In contrast to Claim 2, the method of Buchanan also does not provide a policy for payment of a death benefit upon death of two persons at substantially the same time or within the benefit qualification time frame, <u>and/or</u> upon death of one person and permanent incapacity of another person within a benefit qualification time frame, but, rather, pays a death benefit only upon death of the second of the two insureds to die.

In addition to the suggested combination of cited prior art patents failing to teach or suggest the method for providing a simultaneous or coincident multiple death insurance policy as recited in Claim 2, neither Pescitelli or Buchanan provide the motivation whereby one of ordinary skill in the art at the time of the invention would have been motivated to apply the teachings of Buchanan to Pescitelli to achieve the claimed invention.

Thus, Applicant respectfully submits Claim 2 in patentably distinguishable over the suggested combination of Pescitelli in view of Buchanan. Accordingly, the rejection of Claim 2 under 35 U.S.C. 103(a) should be withdrawn.

Claims 10-11 and 13 depend from Claim 2 and are patentable for at least the reasons given above. The rejection of Claims 10-11 and 13 therefore should be withdrawn.

With respect to independent Claim 14, the Claim has been amended herein and is similar to independent Claim 2 with the exception Claim 14 does not include the limitation of determining the death benefit amount based upon a probability of the simultaneous or coincident death of the persons, and a probably of the coincident death of one person and permanent incapacity of the another person within a benefit qualification time frame. However, with respect to those limitations of Claim 14 that are similar to those limitations of Claim 2 discussed above, Applicant respectfully submits at least one or more of these limitations distinguishes Claim 14 from the cited combination of prior art patents. Therefore, Claim 14 is patentably distinct from the cited combination and the rejection of Claim 14 should be withdrawn.

Claims 17, 20, and 26-27 depend from Claim 14 and are patentable for at least the reasons given above and the rejection should be withdrawn.

Independent Claim 29 has been amended herein and is similar to Claim 14 with respect to the limitations recited therein although Claim 29 is directed to an insurance system for providing a simultaneous or coincident multiple death insurance policy. For at least the reasons given above with respect to Claims 2 and 14, Claim 29 is patentably distinct from the cited combination of prior art patents and the rejection of Claim 29 should be withdrawn.

Claims 37-38 and 40-41 depend on Claim 29 and are patentable for at least the reasons given above.

Independent Claims 42 and 49 have been amended herein and include similar limitations as those of Claim 14, although Claim 42 is directed to a method of insuring one person and another person, or a defined number of persons, and Claim 49 is directed to a method of insuring members of a group or a defined number of members of the group. For at least the reasons given above with respect to Claims 2 and 14, Claims 42 and 49 are patentably distinct from the cited combination of prior art patents. The rejection of Claims 42 and 49 therefore should be withdrawn.

Claims 43-44 depend on Claim 42 and are patentable for at least the reasons given above.

Patentability of New Claims

Applicant has added herein new dependent Claims 65-71 that depend directly or indirectly from Claim 2 and are patentable for at least the reasons given above.

Applicant also has added herein new independent Claim 72 that is similar to the limitations recited in Claim 14 with the exception of the additional limitation of Claim 72 directed to *generating the insurance policy . . . the insurance policy creating an obligation of an insurer to pay the death benefit amount upon the confirmation of at least one of: . . . (iii) the occurrence of death of one of the persons and death of another of the persons within the benefit qualification time frame.* Applicant respectfully submits that Claim 72 is patentable in view of the cited combination of prior art patents for at least the reasons given above with respect to Claims 2 and 14.

In addition, Applicant has added herein new independent Claims 73 and 78, and dependent Claims 74-77 that depend from Claim 73. Claims 73 and 78 are similar to the limitations recited in Claim 14 with the exception of the additional limitation of Claim 73 directed to *generating the insurance policy . . . the insurance policy creating an obligation of an insurer to pay the death benefit amount upon the confirmation of at least one of: . . . (ii) the occurrence of death of one of the persons and death of another of the persons within the benefit qualification time frame*; and the omission of the limitation of Claim 14 directed to *the occurrence of death of one of the persons and the permanent incapacity of another of the persons within the benefit qualification time frame.* Applicant respectfully submits that new Claims 73 and 78, and new Claims 74-77 that depend from Claim 73, are patentable in view of the cited combination of prior art patents for at least the reasons given above with respect to Claims 2 and 14.

Based upon the foregoing amendments and discussion, the present application is believed to be in condition for allowance, and a notice to this effect is respectfully requested. Should the Examiner have any questions concerning this response, he is invited to telephone the undersigned.

Respectfully submitted,

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